

REMARKS

Before entry of this Amendment, claims 1-28 were pending in the application. Claims 10-12, 15, 20-24 and 26-28 have been withdrawn. After entry of this Amendment claims 1-9, 13, 14, 16-19 and 25 remain pending under examination. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made. However, because claim 25 is believed allowable for reasons explained below and also generic to the species of claims 10-12, 15, 20-24 and 26-28, Applicants request that claims 4, 5, 16, 19, 20, 23-25 and 33 be allowed upon allowance of claim 25.

Applicants have carefully considered the Examiner's Action of July 19, 2006, and the references cited therein. The following is a brief summary of the Action. Claims 13 and 14 were objected to because they lack antecedent basis. Claims 1-9, 13, 14, 16-19 and 25 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 1-9 and 25 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0165517 A1 to Datta et al. Claims 12-13 and 15-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al in view of US Patent No. 4,900,317 (hereafter Buell)

Applicants have amended claims 1-9, 13, 14, 16-19 and 25 to remove their indefinite features. Applicants therefore respectfully submit that claims 1-9, 13, 14, 16-19 and 25 are patentable under 35 U.S.C. 112, second paragraph.

For the reasons explained below, applicants respectfully traverse the rejection of claims 1-9 and 25 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0165517 A1 to Datta et al.

In rejecting claims 1 – 9 and 25, the Office Action states on page 4, lines 9 – 16:

At least a first and a second strip of elastomeric material overlie and are attached to the base layer material, with a space between the strips such that a center untensioned region of the base layer material is bordered on at least two sides by composite regions of the elastomeric materials and the base layer material, the center region generally aligned with the absorbent body structure (strips are fit panels 48, waist elastic members 58, leg elastic members 54, attachment panel 66, and containment flaps 56, Figs. 1-9 and paragraphs 11-20, 54, 56, 68-75, 81, and 99).

However, claims 1-9 and 25, as amended herein, require that the center untensioned region of the base layer material is bordered on at least two **longitudinally extending** sides by composite regions of the elastomeric materials and the base layer material.

Datta et al's paragraph 52 defines the respective longitudinal 38 and lateral 40 directions. Datta et al's fit panels 48, waist elastic members 58, and attachment panel 66 do not border **longitudinally extending** sides of the base layer material 44.

Moreover, claims 1-9 and 25, as amended herein, require the first and a second strip of elastomeric material to be attached to the base layer material. Datta et al's attachment panel 66 and leg elastic members 54 are not attached to Datta et al's base layer material 44. Per Datta et al's paragraph 72, Datta et al's leg elastic members 54 are attached to the outer cover 42. The same is true for Datta et al's attachment panel 66 per Datta et al's Fig.1.

Furthermore, claims 1-9 and 25, as amended herein, require the first and second strips of elastomeric material to be wholly disposed on and attached to the base layer

material to form planar composite regions of the elastomeric material and the base layer material. Per Datta et al's paragraphs 69 and 70, Datta et al's containment flaps 56 are at most tacked down in a limited area to the base layer material 44 and form an upright perpendicular configuration rather than a planar composite region.

Applicants therefore respectfully submit that claims 1-9 and 25, as presented herein, are patentable under 102(b) over Datta et al.

For the reasons explained below, applicants respectfully traverse the rejection of claims 13, 14 and 16-19 under 35 U.S.C. 103(a) as being unpatentable over Datta et al in view of Buell.

None of the above deficiencies noted above in Datta et al are corrected by what is disclosed or suggested in Buell.

Applicants therefore respectfully submit that claims 13, 14 and 16-19, as presented herein, are patentable under 103(a) over Datta et al in view of Buell.

Claims 1 and 25 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of co-pending Application No. 10/730,493 to Morman et al. Applicant submits herewith its Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending "Reference" Application


Applicants respectfully request reconsideration and reexamination of claims 1-9, 13, 14, 16-19 and 25, as presented herein, and submit that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension

and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

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